

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 734 of 1995

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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KARSANBHAI DEVABAHI ODEDARA & 1

Versus

JUNAGADH MUNICIPALITY

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Appearance:

MR SURESH M SHAH for Petitioner

MR JAYANT PATEL for Respondent

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CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 19/12/98

ORAL JUDGEMENT

#. This civil revision application is directed against the order of the 2nd Joint Civil Judge (S.D.), Junagadh, dated 24th March 1995, under which the application filed by defendant-respondent for appointment of Commissioner has been granted and City Survey Officer, the experienced surveyor of the office of the District Land Records and Town Planning Officer were appointed as Joint

Commissioners to make report by taking exact measurements jointly of the disputed land.

#. The learned counsel for the petitioner relying on the decision of this Court in the case reported in 1997 GLT 229 contended that once the Commissioner has been appointed in the suit and who has already made Panchnama of the disputed land, no second Commissioner should have been appointed.

#. On the other hand, the learned counsel for the respondent submitted that in the facts of this case, the second Commissioner has rightly been appointed by the learned trial Court and a just and reasonable order has been passed by the learned trial Court to which no exception can be taken.

#. I have given my thoughtful considerations to the submissions made by learned counsel for the parties.

#. The dispute pertains to the grievance made by defendant-respondent that the plaintiff intends to make encroachment on its land. It is not in dispute that in the suit filed earlier by the petitioner against the defendant-respondent a compromise decree has been passed in respect of said land. The petitioner, while making construction on that land, as per the case of defendant-respondent, wanted to make encroachment on the land of defendant-respondent and it has given notice to them not to make encroachment which gave rise to filing of the suit by plaintiffs-petitioners. So from these facts, I am of the opinion that this dispute is of such a nature where to reach to a correct decision a report regarding measurement of land in respect of which compromise has been entered into between the parties in the earlier suit is necessary. It will help to the Court to reach to just and appreciate the real dispute between the parties. I do not find any substance in the contention of the learned counsel for the petitioners that this second report of Commissioner is nothing but only an attempt on the part of the Court to take evidence in the dispute. The Commissioner are being appointed by the Courts so that on the basis of the Panchnama prepared the Court may be in a better position to appreciate and decide the controversy. It is true that earlier the Panchnama has been prepared but in case the earlier Panchnama is lacking in material particulars of disputed land, certainly it will be of little help to the Court to appreciate and decide the controversy in between the parties. In such matters two options would have been open to the Court. Firstly, either to ask the very

Commissioner to prepare a fresh Panchnama or to appoint second Commissioner. Looking to the nature of dispute in this case, I am in perfect agreement with the learned trial Court that the earlier Panchnama has not been done by an expert person and it was also not clearly borne out therefrom what exactly the land has been encroached. the learned counsel for the petitioner to certain extent is correct to say that the lower Court cannot ask for preparation of Panchnama to be used as substantive evidence, but that is not the purpose of appointment of second commissioner. As from the first Panchnama the Court is unable to clearly understand the dispute and other relevant facts of alleged encroachment it is perfectly justified in its approach to get measurements of the dispute land done by the experts, namely City Survey Officer and experienced Surveyor from the office of the District Land Records and Town Planning Office. The Court has taken precaution and a very expert persons have been appointed as Commissioners. Moreover, this Commissioners' Report will facilitate the Court to appreciate the controversy. It is not gainsaid to state that the dispute is only whether the plaintiffs-petitioners are making any construction exceeding the land in respect of which the parties have settled the dispute in the previous suit. So taking into consideration the totality of the facts of the case, the learned trial Court has not committed any material irregularity in exercising its jurisdiction in asking for a second Panchnama by expert persons by appointing them as Commissioners which calls for interference of this Court in this civil revision application under section 115 of the C.P.C. Each case has to be decided on its own facts and decision on which reliance has been placed by the learned counsel for the petitioners in support of his contention is hardly of any help to him in this case.

#. In the result, this civil revision application fails and the same is dismissed. Rule discharged. Interim relief earlier granted by this Court stands vacated. The parties are directed to bear their own costs of this litigation.

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(sunil)